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No. 93-643

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

BESSEMER & LAKE ERIE RAILROAD COMPANY,
Petitioner,

v.

REPUBLIC STEEL CORPORATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION OF ASSOCIATION OF AMERICAN RAILROADS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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November 24, 1993

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MOTION OF ASSOCIATION OF AMERICAN RAILROADS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Association of American Railroads (AAR) hereby moves, pursuant to Supreme Court Rule 37.2, for leave to file the accompanying brief as *amicus curiae* in support of petitioner.[1]

AAR is a voluntary, not-for-profit incorporated trade association of the Nation's railroads. AAR's members operate approximately 76 percent of the line haul mileage, employ approximately 90 percent of the workers, and produce approximately 91 percent of the freight revenues of all railroads in the United States.[2] On mat-

[1] Petitioner and respondents Tauro Brothers Trucking Company, CD Ambrosia Trucking, Erie Western Pennsylvania Port Authority, and Codan Corporation have consented to the filing of this brief. The remaining respondents have not.

[2] A list of AAR's members appears in the attached Appendix. Petitioner Bessemer & Lake Erie Railroad is an associate member of AAR.

ters of concern to the railroad industry, AAR represents its members before courts, agencies, and the Congress.

Central to this case is the proper scope of this Court's decision in *Keogh* v. *Chicago & N.W. Ry.*, 260 U.S. 156 (1922), a decision expressly reaffirmed in *Square D Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986). The railroad industry has a longstanding interest in the vitality of the *Keogh* doctrine, which bars treble damage claims that are based on rates filed in tariffs with federal or state regulatory agencies. Although the doctrine has been applied in a wide variety of regulated industries, *Keogh* itself involved a treble damage claim against a railroad based on its tariff rates filed with the Interstate Commerce Commission (ICC). Moreover, AAR has participated extensively as an *amicus* in cases in which the *Keogh* doctrine was at issue. For example, AAR was granted leave to file a brief as *amicus curiae* in this Court supporting the *Keogh* doctrine in *Square D*, and AAR filed *amicus* briefs before the panel and in support of rehearing en banc in the Third Circuit in this case.

The Third Circuit's decision here presents issues of substantial continuing importance to the railroad industry as a whole. The regulatory scheme was altered by the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (codified as amended in scattered sections of 11 U.S.C., 45 U.S.C., and 49 U.S.C.). Nevertheless, many rates remain subject to Interstate Commerce Commission authority,[3] and significant volumes of railroad traffic nationwide continue to move under ICC-regulated tariffs. Moreover, as interstate common carriers, AAR's member

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[3] Rail traffic not exempted from statutory requirements by the ICC and not governed by contracts as provided under the Staggers Act remains subject to numerous tariff requirements. 49 U.S.C. §§ 10505, 10713, 10762. Likewise, the ICC retains extensive regulatory authority over tariff rates as to which it finds the existence of "market dominance." *Id.* § 10709.

railroads do business in each of the federal judicial circuits. Accordingly, AAR has a significant interest in this Court's resolving the confusion among the circuits as to the scope of the *Keogh* doctrine, which makes the potential liability of AAR's members for treble damages depend on the circuit in which a plaintiff chooses to bring suit.

In the attached brief, AAR addresses the issues raised by this case from the perspective of the railroad industry as a whole, emphasizing the relationship between *Keogh* and the filed rate doctrine, which this Court reaffirmed in *Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990). AAR believes that this broader context would be useful for this Court in deciding whether review is appropriate in this case.

Accordingly, AAR respectfully requests that the Court grant AAR leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

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QUESTION PRESENTED

The Association of American Railroads as *amicus curiae* will address the following question:

Whether the court of appeals correctly held that this Court's decision in *Keogh* v. *Chicago & N.W. Ry.*, 260 U.S. 156 (1922), reaffirmed in *Square D Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986), is inapplicable in the following two situations:

> where tariff rates are the primary but not the exclusive means of precluding market entry by competitors, and
>
> where competitors of the defendant, rather than shippers, are the antitrust plaintiffs.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF AMICUS CURIAE	1
STATEMENT	1
REASONS FOR GRANTING THE WRIT	3
THIS COURT SHOULD GRANT REVIEW IN THIS CASE TO CONSIDER THE PROPER SCOPE OF *KEOGH*'S BAR ON TREBLE DAMAGE CLAIMS BASED ON FILED RATES	4
CONCLUSION	12

TABLE OF AUTHORITIES

CASES — Page

American Commercial Lines, Inc. v. *Louisville & N. R.R.*, 392 U.S. 571 (1968) 5
Arrow Transp. Co. v. *Southern Ry.*, 372 U.S. 658 (1963) 6
Associated Gen. Contractors, Inc. v. *California State Council of Carpenters*, 459 U.S. 519 (1983) 6
Atlantic Richfield Co. v. *USA Petroleum Co.*, 495 U.S. 328 (1990) 6
Board of Trade v. *United States*, 246 U.S. 231 (1918) 8
Georgia v. *Pennsylvania R.R.*, 324 U.S. 439 (1945) 5
H.J. Inc. v. *Northwestern Bell Tel. Co.*, 954 F.2d 485 (8th Cir.), *cert. denied*, 112 S. Ct. 2306 (1992) 11
Holmes v. *Securities Investor Protection Corp.*, 112 S. Ct. 1311 (1992) 11
ICC v. *New York, N.H. & H. R.R.*, 372 U.S. 744 (1963) 5
Keogh v. *Chicago & N.W. Ry.*, 260 U.S. 156 (1922) 2
Lifschultz Fast Freight, Inc. v. *Consolidated Freightways Corp.*, 805 F. Supp. 1277 (D.S.C. 1992) 5
Lifschultz Fast Freight, Inc. v. *Consolidated Freightways Corp.*, No. 92-2523, 1993 U.S. App. Lexis 16974 (4th Cir. July 6), *petition for cert. filed*, 62 U.S.L.W. 3289 (U.S. Oct. 4, 1993) (No. 93-549) 3, 5
Louisville & N. R.R. v. *Ohio Valley Tie Co.*, 242 U.S. 288 (1916) 5
Maislin Indus., U.S., Inc. v. *Primary Steel, Inc.*, 497 U.S. 116 (1990) 3, 10
Pinney Dock & Transp. Co. v. *Penn Cent. Corp.*, 838 F.2d 1445 (6th Cir.), *cert. denied*, 488 U.S. 880 (1988) 2, 3, 4, 8
Reiter v. *Cooper*, 113 S. Ct. 1213 (1993) 3, 10

TABLE OF AUTHORITIES—Continued

	Page
Security Serv., Inc. v. *K Mart Corp.*, 996 F.2d 1516 (3d Cir.), *cert. granted*, 62 U.S.L.W. 3287 (U.S. Oct. 18, 1993) (No. 93-284)	3, 10
Square D Co. v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986)	7, 8, 9, 11
Taffet v. *Southern Co.*, 967 F.2d 1483 (11th Cir.), *cert. denied*, 113 S. Ct. 657 (1992)	11
Terminal Warehouse Co. v. *Pennsylvania R.R.*, 297 U.S. 500 (1936)	5
United States v. *New York Cent. R.R.*, 272 U.S. 457 (1926)	5
Wegoland, Ltd. v. *NYNEX Corp.*, 806 F. Supp. 1112 (S.D.N.Y. 1992)	10

STATUTES

15 U.S.C. § 1	1
§ 2	1
18 U.S.C. § 1964(c)	11
49 U.S.C. § 10704	5
§ 10741	5
§ 11701(b)	5

OTHER AUTHORITIES

Interstate Commerce Commission, *1992 Annual Report*	9
Interstate Commerce Commission, *1979 Annual Report*	10
Investigation of Motor Carrier Collective Ratemaking and Related Practices & Procedures, 7 I.C.C.2d 388 (1991)	10

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BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The interest of the *amicus* is set forth in the accompanying motion for leave to file this brief.

STATEMENT

Petitioner is one of several railroads alleged to have violated sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, by conspiring to restrain trade in the transportation and unloading of iron ore along Lake Erie. Respondents—steel company rail shippers, competing trucking firms and dock owners—alleged that petitioner conspired with other defendants to delay use of self-unloading vessels on Lake Erie by (1) charging artificially high dock handling rates for self-unloaders in ICC-filed tariffs; (2) re-

fusing to publish competitive line haul rates from private docks to steel mills and instead offering only ICC-filed "class rates," which were much higher; and (3) refusing to sell or lease property that could be used as docks for self-unloading vessels. Pet. App. 19a. The claims against all of the defendants, except petitioner, were dismissed or settled before or during trial. The liability jury found for respondents, and the damages jury awarded damages, after trebling and with interest, of over $660 million.

Petitioner moved for judgment notwithstanding the verdict, arguing, *inter alia*, that the claims were barred by *Keogh* v. *Chicago & N.W. Ry.*, 260 U.S. 156 (1922), because they were based on rates contained in tariffs filed with the ICC. The district court denied petitioner's motion, and the Third Circuit affirmed. The court of appeals acknowledged that in the conspiracy alleged in this case, "ICC-approved rates played a role in thwarting market entry." Pet. App. 29a. Indeed, the court made clear that the jury's verdict was based on evidence that steel company officials were interested "in investing in the more cost-effective self-unloaders but that they were discouraged from doing so by the railroads' refusal *to alter their rates* to make the system economical." *Id.* at 66a (emphasis added).

Nevertheless, the court of appeals held that *Keogh* did not bar respondents' treble damage claims here. First, the court held that the claims by the competing trucking companies and dock owners were "not impacted by the *Keogh* rule" because *Keogh* does not bar antitrust claims brought by competitors. The court acknowledged, however, that its holding to that effect conflicted with the Sixth Circuit's decision in *Pinney Dock & Transport Co.* v. *Penn Central Corp.*, 838 F.2d 1445 (6th Cir.), *cert. denied*, 488 U.S. 880 (1988). *See* Pet. App. 36a. Second, the court of appeals concluded that the claims of the steel company shippers also were not barred by *Keogh*. The court reasoned that the alleged conspiracy in this case

was one to "preclude competition" by "lower cost competitors," to which *Keogh* did not apply. *Id.* at 29a, 32a.

REASONS FOR GRANTING THE WRIT

Both aspects of the Third Circuit's decision that *Keogh* is inapplicable to this case are worthy of review.

First, the court of appeals' decision that *Keogh* does not bar treble damage suits brought by competitors exacerbates an acknowledged conflict among the circuits on this important issue. Pet. App. 36a; *see also Lifschultz Fast Freight, Inc.* v. *Consolidated Freightways Corp.*, No. 92-2523, 1993 U.S. App. Lexis 16974 (4th Cir. July 6) (summarily affirming district court decision that *Keogh* bars competitors' actions), *petition for cert. filed*, 62 U.S.L.W. 3289 (U.S. Oct. 4, 1993) (No. 93-549).

Second, the Third Circuit's recognition of an exception for conspiracies to "preclude competition" by "lower cost competitors," Pet. App. 29a, 32a, conflicts directly with the Sixth Circuit's decision in *Pinney Dock & Transport Co.* v. *Penn Central Corp.*, 838 F.2d 1445 (6th Cir.), *cert. denied*, 488 U.S. 880 (1988), and creates an exception that threatens to swallow the *Keogh* rule.

These are issues of exceptional and continuing importance. Substantial volumes of rail traffic travel under tariffs and potentially are affected by the court of appeals' decision. Indeed, the frequency with which this Court in recent terms has revisited the filed rate doctrine, of which *Keogh* is an application, itself demonstrates the continuing importance of the issues presented by this case. *See Security Serv., Inc.* v. *K Mart Corp.*, 996 F.2d 1516 (3d Cir.), *cert. granted*, 62 U.S.L.W. 3287 (U.S. Oct. 18, 1993) (No. 93-284); *Reiter* v. *Cooper*, 113 S. Ct. 1213 (1993); *Maislin Indus., U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990).

The Third Circuit's decision here unduly expands the potential treble damage liability of the railroad industry

and results in interstate railroads being subjected to varying treble damage exposure depending on the circuit in which the suit is brought. This Court should grant review to ensure the uniform interpretation of the federal antitrust laws on this important question.

THIS COURT SHOULD GRANT REVIEW IN THIS CASE TO CONSIDER THE PROPER SCOPE OF *KEOGH*'S BAR ON TREBLE DAMAGE CLAIMS BASED ON FILED RATES.

The Third Circuit's holding that *Keogh* has no application to treble damage claims brought by competitors, rather than by customers, warrants review by this Court. That holding adds to an acknowledged conflict among the circuits on the issue and is contrary to this Court's decisions. Moreover, it subverts the fundamental purpose of the antitrust laws by providing greater protection for competitors of an antitrust defendant than for its customers.

The circuits are sharply split on the applicability of *Keogh* to claims by competitors. In support of its decision here that *Keogh* does not apply to competitors' claims, the Third Circuit relied on decisions by the Second, Eighth, and Ninth Circuits, as well as a prior Third Circuit case. Pet. App. 36a. The Third Circuit expressly acknowledged that its decision was in conflict with the Sixth Circuit's decision in *Pinney Dock*, which held that *Keogh* bars competitors from bringing treble damage claims. *Id.*

In *Pinney Dock*, the Sixth Circuit found no reason to distinguish competitors from customers, concluding that *Keogh* barred treble damage claims by both. Because "the ICC is the sole source of the rights not only of shippers, but of the entire public, including competitors," the *Pinney Dock* court held that competitors "must seek whatever remedies are available under the provisions of the Interstate Commerce Act." 838 F.2d at 1457.

The Third Circuit's decision also conflicts with the Fourth Circuit's decision in *Lifschultz Fast Freight, Inc.* v. *Consolidated Freightways Corp.*, No. 92-2523, 1993 U.S. App. Lexis 16974 (4th Cir. July 6), *petition for cert. filed*, 62 U.S.L.W. 3289 (U.S. Oct. 4, 1993) (No. 93-549), issued less than a month after the panel decision here. That decision summarily affirmed a district court decision that followed the rationale of *Pinney Dock* and held that *Keogh* applies to actions by competitors as well as customers. *See Lifschultz*, 805 F. Supp. 1277, 1295-96 (D.S.C. 1992).

Nothing in *Keogh*, or any of this Court's subsequent decisions, supports the Third Circuit's decision to limit *Keogh* to claims brought by customers. To the contrary, the holding of this Court in *Georgia* v. *Pennsylvania R.R.*, 324 U.S. 439 (1945), was that *Keogh* barred treble damage claims by competitors of carriers as well as by customers.

The Third Circuit's distinction between competitors and customers likewise finds no support in the Interstate Commerce Act. Under the ICA, any "person"—including both customers and competitors—may file a complaint with the ICC asserting a violation of any provision of the Act, including those prohibiting rate discrimination, 49 U.S.C. § 10741, and authorizing the ICC to prescribe rates and practices, *id.* § 10704. *See id.* § 11701(b). Indeed, competitors have commonly availed themselves of this right.[1] The Act does not distinguish

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[1] *See, e.g., American Commercial Lines, Inc.* v. *Louisville & N. R.R.*, 392 U.S. 571 (1968) (water carrier); *ICC* v. *New York, N.H. & H. R.R.*, 372 U.S. 744 (1963) (same); *United States* v. *New York Cent. R.R.*, 272 U.S. 457, 461-63 (1926) (private dock). Competitors not only have standing before the ICC, but they can recover damages for competitive injuries, including lost profits, that result from violations of the ICA. *See Louisville & N. R.R.* v. *Ohio Valley Tie Co.*, 242 U.S. 288 (1916); *Terminal Warehouse Co.* v. *Pennsylvania R.R.*, 297 U.S. 500, 507 (1936).

between competitors and customers in this or any other relevant respect. *See Arrow Transp. Co.* v. *Southern Ry.*, 372 U.S. 658, 669 (1963).[2]

Finally, the Third Circuit's decision makes no sense as a matter of antitrust policy. "The antitrust laws were enacted for 'the protection of competition, not competitors' "[3]—that is, "to assure *customers* the benefits of price competition."[4] The Third Circuit's decision in this case, however, turns this central tenet of the antitrust laws on its head. Under the court of appeals' formulation, *Keogh* precludes only treble damage claims by customers, the intended beneficiaries of the antitrust laws. The law is content to leave their protection to the ICC, the Department of Justice, and private injunctive actions. But, according to the Third Circuit, competitors have an antitrust damage remedy against a filed rate that is denied to a railroad's shippers. This anomaly exists even though both the competitor and the customer could have sought relief

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[2] The petitioner in *Arrow* was a barge company that sought to enjoin a railroad from putting its filed rates into effect on the ground that the rates would drive the barge company out of business. Although the Court "admitted that Congress dealt with the problem as it affected the relations between shippers and carriers, making no express reference to the interests of competing carriers . . .," it found "no warrant in that omission, however, for a difference in result" and refused to permit a federal court injunction. *Arrow Transp. Co.* v. *Southern Ry.*, 372 U.S. 658, 669 (1963). The Court's decision was based in part on the likely availability of remedies under the ICA for competitors and in part on the recognition that "[c]onflicts over rates between competing carriers were familiar to the Commission long before 1910; indeed, the struggle between competing barge and rail carriers has been going on almost since railroads came onto the national scene." *Id.* (footnote omitted).

[3] *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U.S. 328, 338 (1990) (quoting *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 320 (1962)) (emphasis omitted).

[4] *Associated Gen. Contractors, Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 538 (1983) (emphasis added).

by protesting the rate before the ICC. Such a perverse interpretation of the antitrust laws should not be allowed to stand.

The second aspect of the Third Circuit's *Keogh* holding is equally worthy of review by this Court. The court of appeals admitted that "ICC-approved rates played a role in thwarting market entry." Pet. App. 29a. Yet it held that respondents' claims were not "rate-related" under *Keogh* because the railroads "conspired to preclude competition" by "lower cost competitors." Pet. App. 29a, 32a.

This unprecedented holding is contrary to this Court's express reaffirmation of *Keogh* in *Square D*. The plaintiff in *Square D*, like the plaintiffs here, alleged "a conspiracy 'to fix, raise and maintain prices and *to inhibit or eliminate competition.*'" *Square D Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 412 (1986) (emphasis added) (citation omitted). The conspiracy alleged in *Square D* likewise denied customers the lower cost alternatives provided by competitors including other trucking companies that were coerced to participate in the conspiracy. *Id.* at 412-13.

Nevertheless, the Court held that *Keogh* barred the plaintiff's treble damage claims. The Court refused to limit *Keogh* narrowly to its facts, rejecting the argument that *Keogh* did not apply because of various allegations of "covert legal violations" of terms of the rate bureau agreement and coercing carriers from filing independent tariffs, *id.* at 417 n.19, allegations identical to those made by plaintiffs here. Thus, the court of appeals in this case was flatly incorrect in suggesting that *Square D* left unresolved what happens when "members of a regulated industry conspired to preclude competition in which ICC-approved rates played a role." Pet. App. 29a. The Court in *Square D* plainly held that the appropriate course was to excise all rate-related activities from the case and de-

termine whether non-rate activities themselves violated the Sherman Act. 476 U.S. at 414.

Again, the court of appeals' holding is in square conflict with the Sixth Circuit's decision in *Pinney Dock*, which involved the same defendants, the same alleged conspiracy, and essentially identical claims.[5] The Sixth Circuit in *Pinney Dock* held that "the *Keogh* doctrine bars the plaintiffs' antitrust damage claims insofar as those claims are based either on the defendants' own handling charges or on the line-haul rate that was applied from Pinney Dock." 838 F.2d at 1457. The Sixth Circuit further held that to the extent a "boycott or refusal to deal took the form of assessing higher rates and charges, it would again appear that these claims are within the scope of *Keogh*." *Id.* at 1458. The Third Circuit here concluded otherwise, refusing to apply *Keogh* to claims involving the "refusal to handle self-unloaders at their docks [and] . . . boycotts of unregulated docks," Pet. App. 34a, even though the refusals and boycotts likewise "took the form of assessing higher rates and charges."

In practical effect, the court of appeals' decision creates an exception that would swallow the *Keogh* rule. The court's exception for conspiracies to "preclude competition" does no more than restate the substantive reach of Section 1 of the Sherman Act. Every claim under Section 1 must allege a conspiracy to preclude or eliminate competition—that is the "true test of legality" under the antitrust laws.[6] Moreover, every conspiracy found to be un-

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[5] The only difference cited by the court of appeals is that this case, after a full trial, is "in a different procedural position" than *Pinney Dock*, which was decided on summary judgment. Pet. App. 33a-34a. Given that on summary judgment disputed facts must be taken most favorably to the non-moving party, this distinction is meaningless.

[6] *E.g.*, *Board of Trade* v. *United States*, 246 U.S. 231, 238 (1918) (Brandeis, J.): "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes

lawful under the antitrust laws necessarily denies customers the availability of a lower-cost competitive option, otherwise there would be no harm to competition.

Taken at its word, the Third Circuit here does what this Court determined in *Square D* could only be done by Congress: do away with *Keogh* altogether.[7] Under the Third Circuit's formulation, *Keogh* no longer is "an essential element of the settled legal context," *Square D*, 476 U.S. at 423, or "an established guidepost at the intersection of the antitrust and interstate commerce statutory regimes," *id.* Instead, the court of appeals treated *Keogh* as a remnant of regulation to be limited narrowly to its facts—a view this Court expressly rejected in *Square D*. *Id.* at 417 n.19. This Court should grant review in this case to make clear that end runs around Congress and this Court's decisions are impermissible. *Keogh* is part of the judicial and regulatory context in which railroads operate and only Congress should decide whether it will continue to govern the industry.

The Third Circuit's decision has widespread and continuing significance for the railroad industry. Common carriers filed nearly 1.4 million tariffs with the ICC during fiscal year 1992, close to triple the number filed in 1979. Interstate Commerce Commission, *1992 Annual*

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competition or whether it is such as may suppress or even destroy competition."

[7] That the Third Circuit's rejection of *Keogh* here is based on nothing less than a fundamental disagreement with this Court's reaffirmation of *Keogh* in *Square D* is revealed by a footnote in the court of appeals' opinion, which asserts that although the Staggers Act of 1980 "did not specifically overrule *Keogh*," it "significantly undermines its central rationale." Pet. App. 28a n.3. This assertion cannot be reconciled with *Square D*, in which this Court flatly rejected the identical argument that the Motor Carrier Act of 1980 (legislation similar to the Staggers Act but applicable to motor carriers) undermined *Keogh*. *Square D. Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 419-20 (1986).

Report 79 & 113 App. B Table 2. *Compare* Interstate Commerce Commission, *1979 Annual Report* 116 App. B Table 7 (542,867). Of the total, 116,000 tariff filings were by rail carriers, a 16 percent increase over the previous year. *1992 ICC Annual Report* at 79. Again, the number of tariff filings by rail carriers in 1992 was almost double the number in 1979, immediately prior to enactment of the Staggers Act. *1979 ICC Annual Report* at 116 App. B Table 7 (59,291).

This Court has recognized the continuing importance of filed rates and tariff requirements by granting review in no fewer than three cases involving the filed rate doctrine (of which *Keogh* is an application) within the past five terms. *See Security Serv., Inc.* v. *K Mart Corp.*, 996 F.2d 1516 (3d Cir.), *cert. granted*, 62 U.S.L.W. 3287 (U.S. Oct. 18, 1993) (No. 93-284); *Reiter* v. *Cooper*, 113 S. Ct. 1213 (1993); *Maislin Indus., U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990). Indeed, in *Maislin*, this Court stressed again the importance of filed tariffs, invalidating an ICC policy that permitted motor carriers and shippers to negotiate rates in lieu of paying the tariff rate, and making clear that "[d]espite the harsh effects of the filed rate doctrine," it remains the law.[8] *Id.* at 128. After *Maislin*, then ICC Vice-Chairman Emmett emphasized that "filed rates were no longer harmless vestiges of a bygone era," as the Third Circuit treated them here.[9] *Investigation of Motor Carrier Collective*

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[8] The very first case this Court cited in *Maislin* in describing the filed rate doctrine was *Keogh*. *Maislin Indus., U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116, 126 (1990).

[9] One district court has found the decision in *Maislin* a sufficient basis in itself to hold that *Keogh* extends to suits by competitors, not just customers. *See Wegoland, Ltd.* v. *NYNEX Corp.*, 806 F. Supp. 1112, 1116 n.1 (S.D.N.Y. 1992) ("In light of the Supreme Court's 1990 decision in [*Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990)], which expanded the [filed rate]

Ratemaking and Related Practices & Procedures, 7 I.C.C. 2d 388, 466 (1991).

* * * *

The Third Circuit's attack on *Keogh* is plainly worthy of review. It undercuts "an essential element" of the statutory scheme adopted by Congress more than seven decades ago and reaffirmed by this Court only seven years ago. *Square D*, 476 U.S. at 423. It threatens treble damage recovery not only under the antitrust laws, but also under RICO,[10] for railroads that charge the only rate they lawfully can charge. And by brushing aside the Sixth Circuit's contrary decision in *Pinney Dock*, it makes the treble damage liability of an interstate railroad under federal law depend on the circuit in which it is sued.

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doctrine to invalidate a forcefully and deliberately presented ICC policy, the Supreme Court's embrace of the filed rate doctrine can no longer be viewed as so tepid" as not to cover suits by competitors).

[10] A private right of action under RICO is available only to a person who has been "injured in his business or property," language identical to that contained in the treble damages provision of the antitrust laws that was construed in *Keogh*. 18 U.S.C. § 1964(c); *see Holmes* v. *Securities Investor Protection Corp.*, 112 S. Ct. 1311, 1317 (1992). Accordingly, the courts of appeals have held that the *Keogh* doctrine, and decisions construing that doctrine, apply under RICO as well. *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 954 F.2d 485, 494 (8th Cir.), *cert. denied*, 112 S. Ct. 2306 (1992); *Taffet* v. *Southern Co.*, 967 F.2d 1483, 1494 (11th Cir.), *cert. denied*, 113 S. Ct. 657 (1992).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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November 24, 1993

APPENDIX

Association of American Railroads

Full Members

Alton & Southern Railway
Atchison, Topeka & Santa Fe Rwy. Co.
Bangor & Aroostook Railroad Company
Belt Railway Company of Chicago
Burlington Northern Railroad Co.
Cambria & Indiana RR Co.
Canadian National
Canadian Pacific
Chicago & North Western Trans. Co.
CSX Transportation
Consolidated Rail Corporation
Grand Trunk Western
Illinois Central Railroad
Kansas City Southern Railway
Manufacturers Railway Company
Monongahela Railway Co.
National Railways of Mexico
Norfolk Southern Railway Company
Peoria & Pekin Union Railway
Prescott & Northwestern RR Co.
Soo Line Railroad Company
Southern Pacific Transportation
Texas Mexican Railway Company
Union Pacific Railroad Company
Vermont Railway Inc.
Amtrak

Associate Members

Alaska Railroad
Apalachicola Northern Railroad Company
Atlanta, St. Andrews Bay Railway Company
Bessemer & Lake Erie Railroad Company
Chicago, Central, and Pacific Railroad Company

Chicago Rail Link
Dardanelle & Russellville Railroad Company
Delray Connecting Railroad Company
Duluth, Missabe & Iron Range Rwy. Co.
East Erie Commercial Railroad
East St. Louis Junction Railroad Company
Elgin, Joliet & Eastern Railway
French Rail Inc.
Gateway Western Railway Company
Genesee & Wyoming Railroad Company
Georgia North Eastern Railroad
Grafton & Upton Railroad Company
Graysonia, Nashville & Ashdown Railroad Company
Hartsford & Slocumb Railroad Company
Hillsdale County Railway Company, Inc.
Kiamichi Railroad
Lake Superior & Ishpeming Railroad
Lanawee County Railroad Company, Inc.
Long Island Railroad
Louisiana & North West Railroad Company
METRO North Commuter Railroad
MidSouth Rail Corporation
Minnesota, Dakota & Western Railway Company
Monongahela Connecting Railroad Company
Montana Rail Link, Inc.
New Orleans Public Belt Railroad
Paducah & Louisville Railway, Incorporated
Pickens Railroad—National Railway Utilization Corp.
Port Terminal Railroad Association
Providence & Worcester Company
South African Transport
Texas & Northern Railway Company
Toledo, Peoria & Western Railroad Company
Upper Merion & Plymouth Railroad Company
Wheeling & Lake Erie Railway Company